In the Matter of Hester Ridgeway
DOP Docket No. 2005-1311
(Merit System Board, decided February 8, 2006)

The appeal of Hester Ridgeway, a Correction Officer Recruit with South Woods State Prison, Department of Corrections (DOC), of her removal, effective August 13, 2004, on charges, was heard by Administrative Law Judge W. Todd Miller (ALJ), who rendered his initial decision on December 30, 2005. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Merit System Board (Board), at its meeting on February 8, 2006, did not adopt the ALJ's recommendation to modify the removal to a 90-day suspension. Rather, the Board upheld the appellant's removal.

DISCUSSION

The appointing authority presented that the appellant was removed on charges of conduct unbecoming an employee and improper or unauthorized contact with an inmate. Specifically, it was alleged that the appellant had unauthorized contact with a parolee (F.W.) by having a personal relationship with the parolee who was the father of the appellant's children. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

At the hearing, several employees testified regarding this matter. Joseph Moore, a Senior Investigator with South Woods State Prison, testified that on or about June 29, 2004, he received an anonymous telephone call stating that the appellant was involved with a parolee. Moore initiated an investigation and determined that the appellant lived with F.W., who was a current parolee. Moore indicated that the appellant started training and testing with the DOC in or around May 2003 and began her basic Correction Officer training on or about February 23, 2004. He also indicated that she was employed by South Woods State Prison as a Correction Officer Recruit on June 4, 2005. Further, Moore indicated that F.W. was on parole starting February 18, 2003, until he met his demise in an automobile accident on June 11, 2004. Thus, the appellant's training and employment overlapped with F.W.'s status as a parolee and these circumstances were required to be disclosed. Indeed, the appellant specifically admitted in the statement she supplied as part of the investigation that she did not advise anyone that F.W. resided with her even though she was advised of the specifics of undue

familiarity in her academy training and employment orientation. Moore also testified that the appellant had received sufficient materials and training in connection with reporting and avoiding undue familiarity. When asked on cross-examination if there was a difference between inmates and parolees as it pertained to a charge of undue familiarity, Moore indicated that it was essentially the same violation and contact under either circumstance was improper as it compromised the officer and the facility. Moore also testified that the matter involving the appellant could have easily been resolved by disclosing her circumstances and that the issue in the present matter was not the contact, but rather, the appellant's failure to disclose the contact with the parolee.

Harry Chance, a Correction Captain with South Woods State Prison, testified that undue familiarity is the single most significant threat to the safety and security of inmates and correction officers. He explained that it places the officer in a compromising position and that disclosure is imperative. Captain Chance also emphasized former Commissioner Devon Brown's April 22, 2004 memorandum regarding Staff/Inmate Over-Familiarity and the importance of immediate disclosure. When asked on cross-examination as to the penalty for undue familiarity, Captain Chance noted that it ranged from an Official Written Reprimand to removal for a first offense; however, he could not recall an example of when a violation of this nature would receive anything less than removal. Captain Chance also explained that contact with a parolee is just as serious as contact with an inmate, as the parolee could demand that drugs be delivered to an inmate. He noted that failure to disclose this type of contact could compromise the officer as the parolee could threaten to expose the improper contact between them as a means to extort favors.

The appellant testified that in or around mid-2003, she applied for a position at South Woods State Prison and that F.W. was residing with her at that time. She indicated that she started her correction training in February 2004 and that the academy did provide instruction as to undue familiarity. However, she testified that the emphasis was not on policy but more on "training" and that it was not until she began her orientation at South Woods State Prison that the policy of undue familiarity became more prominent. Although she acknowledged receiving training on undue familiarity, the appellant emphasized that she was not instructed that there were exceptions for her particular circumstance. Thus, when the institutional orientation focused on undue familiarity, she became concerned as her current living arrangement presented a problem. Nevertheless, the appellant decided not to disclose the relationship with F.W. because she feared she would lose her job. Moreover, the appellant indicated that her paramount concern was her children and she felt it was important that their father have contact with

them, even though he was a parolee and it could jeopardize her job. Thus, the appellant stated that she believed that any disclosure of her relationship would result in her immediate disqualification from the academy and her termination. As such, the appellant maintained that if the orientation had provided her with more information or a comfort level that her situation would not jeopardize her job, she would have divulged her situation.

In his initial decision, the ALJ found that the appointing authority supported the charges of conduct unbecoming an employee and improper or unauthorized contact with a parolee. However, the ALJ noted that the appellant's primary dispute was with the penalty, since this was her first offense for any disciplinary matter. In this regard, the appellant argued that she was hired in June 2004, was served with a Preliminary Notice of Disciplinary Action (PNDA) on July 13, 2004, and was issued a Final Notice of Disciplinary Action (FNDA) on August 20, 2004. Thus, since F.W. died on June 11, 2004, and no specific dates were listed for the offenses contained in either the PNDA or the FNDA, the appellant contended that she was not violating any policy on the dates contained in the charges. Further, the appellant argued that her circumstances were unique, as she did not engage in any prohibited contact with an inmate, security was not compromised, and that it would have been against the interest of F.W. to compromise the appellant as he lived with her and his children depended on her income. Also, the ALJ considered that F.W. was not a remote stranger or a passing fling, as they had had a relationship for numerous years and that once the investigation started, she was truthful, forthright, and professional. The ALJ underscored the appellant's testimony that her unique situation was not discussed during orientation and that no one told her that it was permissible to have a relationship with a parolee so long as it was disclosed. He also considered the fact that the appellant was concerned for the future of her children.

Moreover, the ALJ stressed that the appellant's "story was consistent and held together" in that she told Moore that she was scared and that is why she did not disclose the relationship and her written statement mentions that she was scared. Thus, the ALJ found that "this was not a last minute contrived defense or plea for sympathy created for [the] trial" as the investigation did not allow the appellant time to reflect or make a story. Against this backdrop, the ALJ considered other cases dealing with undue familiarity and noted that those cases that resulted in removal invariably involved inmates and officers engaging in unauthorized contact, not parolees. He also noted that those cases involved officers who compromised themselves with total strangers in the institution or concealed relationships for long periods of time. The ALJ also considered cases of undue familiarity that involved lesser penalties than removal where the appellants did not involve

themselves with total strangers and the conduct occurred in the institution. *See e.g., In the Matter of Roberta Addison* (MSB, decided September 21, 2005). Given that the appellant was newly trained, inexperienced, and not thoroughly familiar with the policy as it related to her situation, and considering the appellant's lack of prior discipline, the ALJ determined that removal was too severe a penalty and recommended a 90-day suspension.

In its exceptions to the ALJ's initial decision, the appointing authority asserts that the record lacks any support that the appellant's personal circumstances mitigate her egregious conduct. In this regard, it argues that the appellant's alleged fear of being fired is no excuse for breaching security and violating policies. The appointing authority also maintains that the appellant was well aware of the policy regarding undue familiarity, as the appellant received ample training on undue familiarity and the Department's Handbook of Information and Rules specifically discusses that unduly familiar relationships are prohibited. Moreover, the appointing authority notes that the Appellate Division upheld a removal where an executive at DOC headquarters was removed for being engaged to a parolee. *See Deborah A. Hansen v. New Jersey Department of Corrections and the Merit System Board*, Docket No. A-3248-99T5 (App. Div. April 26, 2001). Finally, the appointing authority asserts that the appellant's actions are so egregious that they supersede the policy of progressive discipline in this case.

Upon an independent review of the record, the Board agrees with the ALJ that the appointing authority has met its burden of proof in this matter to uphold the charges. However, the Board finds the appointing authority's exceptions persuasive and disagrees with the ALJ with regard to the penalty and upholds the removal.

In determining the proper penalty, the Board's review is *de novo*. In this regard, the Board is mindful that the ALJ concluded that the appellant was guilty of conduct unbecoming a public employee and improper or unauthorized contact with a parolee, which warranted significant discipline. Moreover, the Board is also mindful of the following admonition from the court:

> The appraisal of the seriousness of [the appellant's] offense and degree which such offenses subvert discipline at Bayside State Prison are matters peculiarly within the expertise of the corrections officials. The appraisal is subject to *de novo* review by the Merit System Board, *ibid.,* but that appraisal should be given significant weight. *Bowden v. Bayside State Prison,* 268 *N.J. Super.* 301, 306 (App. Div. 1993), *cert. denied,* 135 *N.J.* 469 (1994).

However, the standard set forth in *Bowden* does not provide that removal is automatically warranted whenever the charge of undue familiarity with an inmate is sustained. Rather, in determining the penalty, consideration is properly accorded to the level and scope of the relationship between the inmate and the employee and other mitigating factors, as well as the concept of progressive discipline. *See In the Matter of Curtis Cohen* (MSB, decided February 9, 1999). In the matter at hand, it is the application of the *Bowden* and *Cohen* standards that are at issue since the question of an appropriate penalty is the concern for this undue familiarity case.

In cases where the removal of a DOC employee for undue familiarity has been modified to a suspension, the Board has considered such factors as whether the employee received remuneration or other reward as a result of his or her conduct, and whether particular inmates were singled out for different treatment or favors. Other considerations have included the number of times an action or event occurred between an inmate and employee and if the event and charges stem from some type of illicit activity, such as gambling. Moreover, the Board has also considered if the employee had a relationship with an inmate or if he or she only had knowledge of another employee having an inappropriate relationship with an employee. *See e.g., In the Matter of Eldridge Lore* (MSB, decided June 26, 2001). *See also, Cohen, supra.*

On the other hand, the Board's prior decisions where removal for undue familiarity was upheld are distinguishable from the above noted cases. For example, if the underlying nature of the relationship is surreptitious, compromising, or illicit, the Board has sustained the penalty of removal. *See e.g., In the Matter of Robert Rain,* Docket No. A-3933-03T3 (App. Div. February 4, 2005). *See also, In the Matter of Artella Richardson* (MSB, decided March 23, 2005) and *In the Matter of Monet S. Mason* (MSB, decided April 20, 2005).

In *Bowden, supra,* the appellant participated in gambling events with inmates and brought cigarettes into the prison to pay his related gambling debts. Similarly, in *Keyer v. Department of Corrections and Albert C. Wagner Youth Correction Facility,* Docket No. A-6205-97T1 (App. Div. March 12, 1999), the appellant, a Carpenter, was visited at his home by an inmate's brother on two occasions, and he brought the inmate a money order receipt at the request of the inmate's brother in order to demonstrate that the inmate's gambling debt had been satisfied. Notwithstanding the fact that the appellant in *Keyer* refused to deliver cigarettes that the inmate's brother delivered on a second visit to the home, the Appellate Division reversed the Board's decision to modify the appellant's removal to a six-month suspension. Specifically, relying on its decision in *Bowden, supra,* and *Henry v. Rahway*

State Prison, 81 *N.J.* 571, 579 (1980), the *Keyer* court emphasized "in disciplinary proceedings involving employees of the Department of Corrections, the effect of a breach of duty by an employee on prison discipline is highly relevant to the final decision." In *Keyer*, the appellant breached his duty to report and disclose his contacts to the prison authorities.

Even more recently, in *In the Matter of Charles Newsome* (MSB, decided October 19, 2005), on reconsideration, the Board did not adopt the recommendation of the ALJ to modify a removal to a 90-day suspension for a Senior Correction Officer who did not disclose to prison authorities a one-time rendezvous with an escaped inmate's girlfriend to deliver personal property confiscated by the Newark Police.[1] In *Newsome*, the Board emphasized that since the appellant did not disclose the unauthorized contact, he breached his duty. Similar to the case at hand, the ALJ in *Newsome* determined that that appellant was "contrite, apologetic, and ultimately credible" and considered the fact that the appellant "acknowledged his disciplinary lapses" when he recommended a 90-day suspension. Essentially, in upholding the removal, the Board considered these factors, but, on balance, determined that the underlying institutional safety that Newsome's actions compromised warranted removal.

Particularly germane to this case is *Hansen, supra.* In *Hansen*, the Appellate Division upheld the Board's removal of a long term, non-uniformed DOC employee who had a relationship with a parolee. Similar to the matter at hand, that appellant argued that the policy regarding her situation was vague and improperly administered, resulting in her being uninformed about what conduct constituted undue familiarity. In upholding the removal, the court indicated:

> [w]e should not question the rationale giving rise to the standard of discipline which precludes close personal relationships between Department employees and parolees so long as it bears some relationship to promoting security. We are satisfied that the need to eliminate the chance of conflict of interest that might easily arise should a parolee, not within the petitioner's immediate jurisdiction, suddenly place himself there by leaving the state is sufficient. *Slip Opinion* at 13.

In the matter at hand, the appellant maintains that her initial training was unclear as to the limits of undue familiarity and that she did not know that simple disclosure of her relationship with a parolee to the proper

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[1] The ALJ's summary of this case on page 16 of his initial decision is incorrect. The Board, on reconsideration of this matter, upheld the appellant's removal.

authorities may have prevented her dilemma.[2] However, the Board is mindful that the appellant conceded to receiving training in undue familiarity at both the Correction Officer training academy and during her orientation at South Woods State Prison. Notwithstanding her long term relationship with F.W. prior to his incarceration and the fact that she had three children by him, the appellant conceded that she "wanted to tell someone but I didn't because I felt that they [were] going to dismiss me." She also indicated that "on numerous occasions I wanted to talk to someone about my situation but I thought that they would dismiss me." Thus, exception or not, it is apparent that the appellant thought it was wrong at least at some point after May 20, 2004, when she signed her new hire orientation check list, and wanted to advise the proper authority of her situation, but instead intentionally decided to violate the policy. The appellant's argument that her training was unclear as to her particular situation is not compelling and appears to be a mere technical evasion, as it is axiomatic that disclosure would be required in the case of a recent parolee, who is the father of a new Correction Officer's three children, and who resides with her. Moreover, the appellant's situation arose from an anonymous tip to Moore, which underscores the appointing authority's argument that these types of relationships can compromise an officer.

In determining the proper penalty, the Board's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Board also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. Although the Board applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. *See Henry v. Rahway State Prison*, *supra.* Even when an employee does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense occurring in the environment of a correctional

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[2] According to DOC's Standards of Professional Conduct, Policy ADM.010.001, paragraph 8, no employee of the DOC shall establish or maintain a non-professional personal relationship with any inmate, probationer, *parolee,* or ex-offender. Further, article IV requires staff who may be related "by family" to notify the Special Investigations Division or department supervisor in writing prior to beginning contact. Sub-section (b) requires similar notification in cases of a close personal relationship with an offender or an offender's family prior to coming under supervision of the DOC. The Policy also indicates that an employee and an offender on release status *may* be exempt from these prohibitions provided the employee was married to the offender prior to sentencing and such notification and verification has been provided.

facility may nevertheless warrant the penalty of removal where it compromises the safety and security of the institution, or has the potential to subvert prison order and discipline. *Henry v. Rahway State Prison*, *supra*, 81 *N.J.* at 579-580. In this case, an analysis of the appellant's past disciplinary history is unnecessary since it is clear that removal is the proper penalty. An individual in the appellant's position is entrusted with the supervision on inmates in a secured facility. Any uncertainty regarding the appropriateness of a relationship, be it with an inmate or a parolee, must be disclosed to the appropriate authority in order to maintain the safety and security of the facility. In this case, it is evident that the appellant intentionally violated the policy as she had serious concerns regarding her relationship with a parolee to the point where she thought disclosure would result in her being dismissed. Such inappropriate behavior, notwithstanding that the parolee was the father of her children and was killed in a car accident, cannot be tolerated and is worthy of severe sanction. Accordingly, the Board finds that the penalty imposed by the appointing authority was neither unduly harsh nor disproportionate to the offense and should be upheld.

ORDER

The Merit System Board finds that the action of the appointing authority in imposing the removal was justified. Therefore, the Board affirms that action and dismisses the appeal of Hester Ridgeway.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.